**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4540**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Guffey, Trantham, Pope, Henegan, Taylor, Oremus and Felder

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Introduced in the House on January 9, 2024

Currently residing in the House

Summary: Children's Default to Safety Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/16/2023 House Prefiled

 11/16/2023 House Referred to Committee on **Judiciary**

 1/9/2024 House Introduced and read first time (House Journal‑page 76)

 1/9/2024 House Referred to Committee on **Judiciary** (House Journal‑page 76)

 1/10/2024 House Member(s) request name added as sponsor: Felder

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**VERSIONS OF THIS BILL**

[11/16/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4540_20231116.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ENACTing THE “CHILDREN’S DEFAULT TO SAFETY ACT” BY ADDING ARTICLE 9 TO CHAPTER 5, TITLE 39 SO AS TO PROVIDE PROTECTIONS FOR CHILDREN AGAINST UNFILTERED DEVICES; TO PROVIDE NECESSARY DEFINITIONS; TO REQUIRE MANUFACTURERS OF SMART PHONES AND TABLETS TO AUTOMATICALLY ENABLE AND PASSCODE‑PROTECT THE FILTERS BLOCKING MATERIAL HARMFUL TO MINORS ON DEVICES ACTIVATED IN THIS STATE; TO SUBJECT MANUFACTURERS TO CIVIL AND CRIMINAL LIABILITY FOR VIOLATIONS OF THIS ARTICLE; AND TO SUBJECT INDIVIDUALS TO CRIMINAL AND CIVIL LIABILITY FOR VIOLATIONS OF THIS ARTICLE; AND BY AMENDING SECTION 16‑17‑490, RELATING TO CONTRIBUTING TO DELINQUENCY OF A MINOR, SO AS TO PROHIBIT PROVIDING A PASSCODE TO REMOVE THE PORNOGRAPHY FILTER FOR AN INTERNET‑ACCESSIBLE DEVICE BY SOMEONE OTHER THAN A MINOR’S PARENT OR LEGAL GUARDIAN.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Children’s Default to Safety Act”.

SECTION 2. Chapter 5, Title 39 of the S.C. Code is amended by adding:

 Article 9

 Protection from Unfiltered Devices

 Section 39‑5‑910. (1) “Activate” means the process of powering on a device and associating it with a new user account.

 (2) “Device” means a tablet or a smart phone manufactured on or after January 1, 2025.

 (3) “Filter” means software installed on a device that is capable of preventing the device from accessing or displaying material that is harmful to minors through the Internet or any applications owned and controlled by the manufacturer and installed on the device.

 (4) “Harmful to minors” means the same as the term is defined in Section 16‑15‑375(1).

 (5) “Internet” means the global information system that is logically linked together by a globally unique address space based on the Internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/Internet protocol(TCP/IP) suite, or its subsequent extensions, or other IP‑compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high‑level services layered on communications and related infrastructure.

 (6) “Manufacturer” means a person that:

 (a) is engaged in the business of manufacturing a device; or

 (b) holds the patents for the device it manufactures; and

 (c) has a designated registered agent as required by Section 33‑5‑101.

 (7) “Minor” means an individual under the age of eighteen who is not emancipated, married, or a member of the Armed Forces of the United States.

 (8) “Smart phone” means an electronic device that combines a cellular phone with a hand‑held computer, typically offering Internet access, data storage, text, and email capabilities.

 (9) “Tablet” means an Internet‑ready device equipped with an operating system, touchscreen display, rechargeable battery, and has the ability to support access to a cellular network.

 Section 39‑5‑920. Beginning January 1, 2025, a manufacturer must manufacture a device that, when activated in this State, automatically enables and passcode protects a filter that:

 (1) when enabled, prevents the user from accessing or downloading material that is harmful to minors on:

 (a) mobile data networks;

 (b) applications owned and controlled by the manufacturer;

 (c) wired Internet networks; and

 (d) wireless Internet networks;

 (2) notifies the user of the device when the filter blocks the device from downloading an application or accessing a website;

 (3) gives a user with a passcode the opportunity to unblock a filtered application or website; and

 (4) reasonably precludes a user other than a user with a passcode the opportunity to deactivate, modify, or uninstall the filter.

 Section 39‑5‑930. (A) Beginning January 1, 2025, a manufacturer of a device is subject to civil and criminal liability if:

 (1) the device is activated in this State;

 (2) the device does not, upon activation, enable a filter that complies with the requirements described in Section 39‑5‑920; and

 (3) the minor accesses material that is harmful to minors on the device.

 (B) Notwithstanding subsection (A), this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in this State, automatically enables a generally accepted and commercially reasonable method of filtration in accordance with this section and industry standards.

 Section 39‑5‑940. (A) Whenever the South Carolina Attorney General has reason to believe that a person violated or is violating the provisions of this article, the Attorney General, acting in the public interest, may bring an action in the name of the State against such person:

 (1) to enjoin any action that constitutes a violation of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction;

 (2) to recover from the alleged violator a civil penalty not to exceed five thousand dollars per violation, and not to exceed a total of fifty thousand dollars in aggregate, as determined by the court;

 (3) to recover from the alleged violator the Attorney General’s reasonable expenses, investigative costs, and attorney’s fees; and

 (4) to obtain appropriate relief as provided for under this article.

 (B) The Attorney General, in addition to other powers conferred upon him by this article, may issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

 (C) The Attorney General may seek the revocation of any license or certificate authorizing a manufacturer to engage in business in this State.

 (D) For purposes of assessing a penalty under this section, a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1, 2025, that violates the provisions of Section 39‑5‑930.

 Section 39‑5‑950. (A) Any parent or legal guardian of a minor that accesses pornographic content that is harmful to minors in violation of Section 39‑5‑920 may bring a private cause of action in any court of competent jurisdiction against a manufacturer who fails to comply with the provisions of Section 39‑5‑920.

 (1) A prevailing plaintiff may recover:

 (a) actual damages; or

 (b) in the alternative, in the discretion of the court where actual damages are difficult to ascertain due to the nature of the inquiry, liquidated damages in the amount of fifty thousand dollars for each violation; and

 (c) when a violation is found to be knowing and wilful, punitive damages in an amount determined by the court;

 (d) nominal damages;

 (e) attorney’s fees; and

 (f) such other relief as the court deems appropriate, including court costs and expenses.

 (B) Nothing herein precludes bringing a class action lawsuit against a manufacturer where its conduct is in violation of Section 39‑5‑920 and is knowing and wilful.

 (C) Any parent or legal guardian of a child may bring an action in a court of competent jurisdiction against any person who is not the parent or legal guardian of the child and provides the passcode to remove the filter from a device in the possession of a child which results in the child’s exposure to content that is harmful to minors.

 Section 39‑5‑960. (A) Beginning on January 1, 2025, it is a criminal offense for any person, with the exception of a parent or legal guardian, to provide the passcode to remove the filter on a device in the possession of a minor.

 (B) Anyone found to be in violation of subsection (A) is guilty of a misdemeanor and must pay a fine not to exceed five thousand dollars for the first offense and not to exceed fifty thousand dollars for the second offense. Jail time may be considered for repeat offenders not to exceed one year.

SECTION 3. Section 16‑17‑490 of the S.C. Code is amended by adding before the first undesignated paragraph following item (10):

 (11) To provide a passcode to remove the pornography filter on an Internet‑accessible device in the possession of a minor, unless the adult is the minor’s parent or legal guardian.

SECTION 4. This act takes effect upon approval by the Governor.

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